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Kan. 434; *Smiley v. Wright*, 2 Ohio 506. Many courts hold that a husband will be compelled to convey such title as he can give, allowing purchaser an abatement in price for not obtaining wife's signature, *Presser v. Hildebrand*, 23 Iowa 483; *Walker v. Kelley*, 91 Mich. 212; *Martin v. Merritt*, 57 Ind. 34; *Wright v. Young*, 6 Wis. 127. In other jurisdictions, it is held such a decree would virtually be making a new contract, *Burks App.*, 75 Pa. 141; *Roos v. Lockwood*, 59 Hun 181; *Hawralty v. Warren*, 18 N. J. Equity 124. Following these decisions, the Utah court holds that the contract cannot be enforced against wife for two reasons, namely, that it was unenforceable against the husband during his lifetime, and, further, that the remedy being a matter of discretion, and not of right, it would be applied only in those cases in which complainant has a clear equity.

TAXATION—VALIDITY OF STOCK TRANSFER TAX.—The New York "Stock Transfer Stamp Tax Law" (Laws of 1905, c. 241) imposes on all sales or transfers of shares of stock in any domestic or foreign corporation, a stamp tax of two cents "on each one hundred dollars of face value or fraction thereof." Defendant, a resident of Connecticut, while in New York State sold to a broker, also a resident of Connecticut, one hundred shares of the capital stock in a certain foreign corporation, of the par value of one hundred dollars per share, for the sum of thirty dollars per share, the then market value of said stock and also one hundred shares of the capital stock in a certain other foreign corporation of the par value of one hundred dollars per share, for the sum of one hundred seventy-two dollars per share, the then market value of said stock. Defendant neglected to affix the required stamps and was arrested on a warrant charging a violation of the above statute. In habeas corpus proceedings, instituted to test the validity of the arrest, the Supreme Court of the United States held the statute constitutional. *People of the State of New York ex rel. Albert J. Hatch v. Edward Reardon* (1907), 27 Sup. Ct. Rep. 188.

The doctrines announced in this decision are not novel nor is the result surprising, but the case is of interest in that it seems to be the first time that the Supreme Court of the United States has had occasion to pass upon the validity of a state statute of this particular kind. It is true that the statute here in question follows in all material respects § 6 and Schedule A of the United States War Revenue Tax Law of 1898 (30 U. S. Stat. at Large, 451, 458, as respectively amended by 31 id. 940, § 5, and Id. 942, § 8), and that in *United States v. Thomas*, 115 Fed. Rep. 207, affirmed, 192 U. S. 363, the latter statute was declared constitutional. It seems to have been urged in argument, however, that different considerations apply to the states, and it was contended that the present act was invalid under the Fourteenth Amendment to the Federal Constitution, as making an arbitrary discrimination in favor of other kinds of personal property and as taking property without due process of law, and it was also contended that the statute was an unconstitutional interference with interstate commerce. As to the first point the Court declared that practical grounds may form a proper basis of classification, and cited *Otis v. Parker*, 187 U. S. 606, 47 L. ed. 323, 23 Sup. Ct. Rep.

168, in support of its view. In support of the contention that the statute provided for taking property without due process of law, two arguments were advanced: (1) that a tax on sales is really a tax on property and that, therefore, the act, as applied to the shares of a foreign corporation owned by now-residents, is invalid, and (2) the adoption of the face value of the shares as the basis of the tax, renders it invalid. The Court answered the first of these two objections as follows: "A sale depends in fact on the law of the state where it takes place for its validity and, in the courts of that state, at least, for the mode of proof. \* \* \* Therefore the state may make parties pay for the help of its laws, as against the objection." On the second point the Court said that here again equality must yield to practical consideration and usage. The Court also held that the sale which took place was not interstate commerce. In a recent case, the New York Court of Appeals, construing an amendment to the above act, placed its own limits upon the power of the legislature to depart from the actual value of the stock in the assessment of the tax. (See next note.)

**TAXATION—VALIDITY OF STOCK TRANSFER TAX—EQUALITY AND UNIFORMITY.**—New York Laws 1905, p. 474, c. 241, § 315, which imposes a tax on sales of stock of domestic and foreign corporations of two cents "on each one hundred dollars of face value or fraction thereof," was amended by Laws 1906, p. 1008, c. 414, so as to impose a tax of two cents per share on the sale of all shares of the face value of one hundred dollars, and of all shares of the face value of any fraction thereof. The amendment was *held* unconstitutional. *People ex rel. Farrington v. Mensching* (1907), — N. Y. —, 79 N. E. Rep. 884.

The ground of this decision was that there was no basis for the distinction made between sales of shares of different companies—"no difference bearing even a colorable relation to the classification attempted." It seems that the amendment of 1906 differs from the Act of 1905 in the degree of rigor rather than in principle. The amendment was confiscatory in its application to sales of shares of extremely low face value. This case holds that the Act of 1905 was not repealed by the unconstitutional amendment of 1906, and is still in force. (See preceding note.)

**VENDOR AND PURCHASER—CONTRACT—BREACH—ACTION.**—Contract for sale of lands provided that the vendor was to deliver to the vendee an abstract of title without delay. Plaintiff, in his action for specific performance of the contract of sale, did not allege a refusal to deliver an abstract, but only that no abstract had been delivered. *Held*, that because the contract was dated eight days before the complaint was verified and twelve days before it was personally served, the court will not infer that a reasonable time for delivery had expired. *Cummings v. Wilson* (1906), — Minn. —, 110 N. W. Rep. 4.

The majority were of the opinion that they could not so infer and that the plaintiff had not alleged a breach, and therefore the bill was demurrable for a failure to state a cause of action. The dissenting judge was of the opinion that the allegations fairly alleged a demand and refusal, and, in as